

ESTTA Tracking number: **ESTTA518638**Filing date: **01/29/2013**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	ImmuCell Corporation		
Entity	Corporation	Citizenship	Delaware
Address	56 Evergreen Drive Portland, ME 04103 UNITED STATES		

Attorney information	Charles P. Bacall Verrill Dana, LLP One Portland Square P.O. Box 586 Portland, ME 04112-0586 UNITED STATES cbacall@verrilldana.com Phone:207-774-4000
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Applicant Information

Application No	85523047	Publication date	01/01/2013
Opposition Filing Date	01/29/2013	Opposition Period Ends	01/31/2013
Applicant	Price REM LLC 23103 Miles Road, Suite 200 Cleveland, OH 44128 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Antimicrobial coatings to treat the growth of mold, mildew, bacteria and fungus on various surfaces
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2432904	Application Date	05/28/1999
Registration Date	03/06/2001	Foreign Priority Date	NONE
Word Mark	FIRST DEFENSE		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 005. First use: First Use: 1992/05/13 First Use In Commerce: 1992/05/13 ANTIBODY PREPARATIONS SOLD IN CAPSULE FORM FOR PREVENTION OF SCOURS IN BOVINE LIVESTOCK

U.S. Registration No.	2688577	Application Date	05/17/2002
Registration Date	02/18/2003	Foreign Priority Date	NONE

Word Mark	IMMUCELL
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 005. First use: First Use: 1983/09/30 First Use In Commerce: 1983/09/30 Veterinary preparations, namely, diagnostic kits for clinical or medical laboratory use, antibody preparations for livestock, pharmaceutical preparations for livestock for treating scours, mastitis, and infectious diseases, and pre-moistened towelettes impregnated with antimicrobial and skin conditioning material for cleaning animal teats
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Attachments	76409470#TMSN.gif (1 page)(bytes) 1ST DEFENSE ANTI-MICROBIAL SURFACE PROTECTANT & Design Notice Opp 012913.pdf (6 pages)(199510 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Charles P. Bacall/
Name	Charles P. Bacall
Date	01/29/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Applicant: Price REM LLC)
Serial No.: 85/523,047)
Filing Date: January 23, 2012)
Mark: 1ST DEFENSE)
"ANTI-MICROBIAL")
SURFACE PROTECTANT)
(& Design))
Published: January 1, 2013)
_____)

ImmuCell Corporation, Opposer

v.

Price REM LLC, Applicant

Opposition No. _____

NOTICE OF OPPOSITION

Opposer: ImmuCell Corporation
a Delaware corporation
56 Evergreen Drive
Portland, ME 04103

The above-identified Opposer believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for the opposition are as follows:

1. This is an opposition by ImmuCell Corporation ("ImmuCell"), a veterinary pharmaceutical company based in Portland, Maine, to stop Price REM LLC's ("Applicant") attempt to register the trademark 1ST DEFENSE "ANTI-MICROBIAL" SURFACE

PROTECTANT (& Design), which is confusingly similar to ImmuCell's common law and federally registered FIRST DEFENSE trademark.

2. ImmuCell has been using the FIRST DEFENSE mark in connection with its veterinary pharmaceutical products since at least 1992.

3. ImmuCell has spent significant time and money promoting FIRST DEFENSE to customers nationwide and worldwide. Customers have come to know FIRST DEFENSE as a symbol of ImmuCell's products.

4. ImmuCell owns United States Trademark Registration number 2,432,904, dated March 6, 2001, for the mark FIRST DEFENSE, for "Antibody preparations sold in capsule form for prevention of scours in bovine livestock" in International Class 005. That registration is now incontestable. A true and accurate copy of ImmuCell's FIRST DEFENSE registration is attached as Exhibit 1.

5. On or about January 23, 2012, Applicant filed the instant application to register the trademark 1ST DEFENSE "ANTI-MICROBIAL" SURFACE PROTECTANT (& Design) on an intent-to-use basis. The application requests registration for the following goods: "Antimicrobial coatings to treat the growth of mold, mildew, bacteria and fungus on various surfaces" in International Class 005.

6. ImmuCell also manufactures and sells antimicrobial wipes in International Class 005, as evidenced by United States Trademark Registration 2,688,577, for the IMMUCELL mark, dated February 18, 2003. That registration is now incontestable. A true and accurate copy of ImmuCell's IMMUCELL registration is attached as Exhibit 2. Therefore, the goods covered by the application and the goods covered by ImmuCell's FIRST DEFENSE registration are likely to emanate from the same source.

7. The goods covered by the Application are so similar to the goods offered by ImmuCell and covered by ImmuCell's registrations as to be likely to cause confusion, deception and mistake about whether any such goods are manufactured or licensed by ImmuCell or otherwise affiliated with ImmuCell.

8. ImmuCell's rights in the FIRST DEFENSE mark predate the Applicant's rights (if any) in the 1ST DEFENSE "ANTI-MICROBIAL" SURFACE PROTECTANT (& Design) mark.


9. Applicant's registration and/or use of 1ST DEFENSE "ANTI-MICROBIAL" SURFACE PROTECTANT (& Design) will dilute and otherwise interfere with ImmuCell's use of its FIRST DEFENSE trademark and will harm ImmuCell.

The filing fee of \$300.00 for this Notice of Opposition is filed herewith.

Respectfully submitted,

VERRILL DANA, LLP

Dated: January 29, 2013

By: 
Charles P. Bacall
Attorneys for Opposer
One Portland Square
P.O. Box 586
Portland, ME 04112-0586
(207) 774-4000

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on Applicant on January 29, 2013 by mailing the true and complete copy via First Class Mail, postage prepaid, to:

Price REM LLC
23103 Miles Road, Suite 200
Cleveland, OH 44128-5466

A handwritten signature in cursive script, appearing to read "Charles P. Bacall", written in black ink.

Charles P. Bacall
Attorney for Opposer

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

Reg. No. 2,432,904

United States Patent and Trademark Office

Registered Mar. 6, 2001

**TRADEMARK
PRINCIPAL REGISTER**

FIRST DEFENSE

IMMUCELL CORPORATION (DELAWARE CORPORATION)

56 EVERGREEN DRIVE
PORTLAND, ME 04103

IN BOVINE LIVESTOCK, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 5-13-1992; IN COMMERCE 5-13-1992.

SER. NO. 75-717,984, FILED 5-28-1999.

FOR: ANTIBODY PREPARATIONS SOLD IN
CAPSULE FORM FOR PREVENTION OF SCOURS

ANDREA SAUNDERS, EXAMINING ATTORNEY

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

Reg. No. 2,688,577

United States Patent and Trademark Office

Registered Feb. 18, 2003

**TRADEMARK
PRINCIPAL REGISTER**

IMMUCELL

IMMUCELL CORPORATION (DELAWARE CORPORATION)
56 EVERGREEN DRIVE
PORTLAND, ME 04103

PRE-MOISTENED TOWELETTS IMPREGNATED
WITH ANTIMICROBIAL AND SKIN CONDITION-
ING MATERIAL FOR CLEANING ANIMAL TEATS,
IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FOR: VETERINARY PREPARATIONS, NAMELY,
DIAGNOSTIC KITS FOR CLINICAL OR MEDICAL
LABORATORY USE, ANTIBODY PREPARATIONS
FOR LIVESTOCK, PHARMACEUTICAL PREPARA-
TIONS FOR LIVESTOCK FOR TREATING SCOURS,
MASTITIS, AND INFECTIOUS DISEASES, AND

FIRST USE 9-30-1983; IN COMMERCE 9-30-1983.

SER. NO. 76-409,470, FILED 5-17-2002.

JANICE MOONEYHAM, EXAMINING ATTORNEY